

MV 96-3

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax - Value Exceeds \$15,000

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	Docket #
v.	)	Acct #
	)	Asses. #
TAXPAYER,	)	
	)	
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

Appearances: Messrs. Greenbaum and Leavitt by Lawrence H. Leavitt, for the taxpayer.

Synopsis:

This case came on to be heard as a set matter, the Department of Revenue having jurisdiction of the parties and subject matter, and the administrative judge now being fully advised in the premises;

This cause arose by way of a protest dated July 20, 1995 in response to a Notice of Tax Liability issued by the Department of Revenue on June 9, 1995 against the captioned taxpayer after reviewing the Vehicle Use Tax Return filed by the taxpayer following her purchase of a used Mercedes Benz automobile from a private individual.

The taxpayer reported paying the sum of \$14,900.00 for the vehicle, plus \$350.00 for a car phone, with attachments for use in the car, for an additional \$350.00, making the total purchase price \$15,250.00.

The taxpayer computed the use tax on the basis of a purchase price of \$14,900.00, and paid the sum of \$90.00 for Motor Vehicle Use Tax.

The Department computed the purchase price on the total payment of \$15,250.00, basing its opinion on the fact that the seller had provided the taxpayer with a document stating as follows:

"I TAXPAYER sold 1989 Mercedes Benz Model 300SE Vec. No. WDBCA24D3KA444858. (Milage 66830) With no warranty car sold as is with knowledge of repairs needed.

For the sum of \$14,900.00 plus Motorola Portable Car Phone with all accessories for \$350.00 Total \$15,250.00."

Seller S/

Buyer S/

#### **Findings Of Fact:**

1. The taxpayer purchased a used car from a private individual for a total purchase price of \$15,250.00, including a portable phone, with all attachments for use in the car. Tr. p. 8

2. The seller provided the taxpayer with a document in the nature of a Bill of Sale, in which he describes the phone as a "portable car phone." Tr. p. 18

3. The phone, apparently can be used as a cellular phone, away from the car by using different attachments. Tr. pp. 11 and 24

#### **Conclusions and Recommendations:**

I reject taxpayer's argument that all cellular phones are referred to as car phones, and that the term "car phone" is generic in nature. Tr. p. 18. I conclude that the use of the term "car phone" is the result of the parties' thinking of the phone as an accessory to the automobile. The fact that it may be possible to use the phone away from the vehicle does not, in my opinion,

affect, or change, the fact that the parties treated the phone as a useful and desirable accessory to the car.

I recommend that the Notice of Tax Liability be affirmed as issued.

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Administrative Law Judge